

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs April 22, 2008

**STATE OF TENNESSEE v. NORMAN ROBINSON**

**Appeal from the Criminal Court for Davidson County**  
**No. 2006-B-1440 J. Randall Wyatt, Judge**

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**No. M2007-01836-CCA-R3-CD - Filed June 10, 2008**

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The Defendant, Norman Robinson, was convicted of aggravated sexual battery, a Class B felony. He was sentenced to eight years in the Department of Correction. He now appeals two issues: (1) the sufficiency of the evidence establishing the victim's age at the time of the offense; and (2) whether the trial court improperly questioned the victim. We affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

DAVID H. WELLES, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and ROBERT W. WEDEMEYER, JJ., joined.

Derrick Scretchen, Nashville, Tennessee, for the appellant, Norman Robinson.

Robert E. Cooper, Jr., Attorney General and Reporter; Preston Shipp, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and J.W. Hupp, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**Factual Background**

The Davidson County Grand Jury indicted the Defendant for the aggravated sexual battery of his adopted daughter, the victim.<sup>1</sup> He entered a plea of not guilty, and a jury trial followed.

At trial, the victim testified that she was born on November 10, 1991, and that she began living in the Defendant's household at the age of two. Nine siblings (one sister and eight brothers) also lived in the Defendant's house with the victim. Some of the children were the Defendant's biological children; the others were adopted. The victim considered the Defendant to be her father.

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<sup>1</sup>This Court's policy is to protect the identity of minor victims of sexual abuse.

Following this introductory testimony, the victim, the State, the trial court, and defense counsel had the following exchange regarding the date on which the offensive sexual conduct took place:

[State]: Now, you said that you loved Mr. Robinson as a father and he was the only father figure in your life. Did something happen in 2004 that changed that relationship you had with him?

[victim]: Yes, sir.

[State]: And how old were you when that happened?

[victim]: Around thirteen, fourteen.

[State]: Now, you're fifteen now.

[victim]: Yes, sir.

[State]: Okay, so what—was that in 2004, 2005, or 2006?

[victim]: 2004.

[State]: Okay. So what—and you were born in 1991, right?

[victim]: Yes, sir.

[State]: So you would have turned thirteen in November of 2004, if my math is right, you would have turned thirteen. So was it before that thirteenth birthday or after that thirteenth birthday?

[victim]: After.

[State]: So was it the very—November or December of 2004?

[victim]: It was kind of like January, at the beginning of the—the beginning of that next month.

[State]: Okay. So was it in 2005 or 2004?

[victim]: I—it was probably the beginning of 2005.

[State]: Do you remember for sure when it was?

[victim]: No, I—I remember it was around January.

[State]: So you're not sure of the year?

[victim]: No, sir.

[trial court]: Well, we need to get this clarified, because that's—that's pretty significant.

[State]: Yes, Your Honor.

[trial court]: So—

[State]: Did you tell somebody the day this incident happened—did you tell somebody—

[defense counsel]: I'm going to object to the leading Your Honor. She's answered the question and—

[trial court]: Just—you started off saying 2004, something. So if you could let her in her words testify if she knows when it was in 2004 or early 2005 or whatever it is that you're saying that this incident that you're here about now happened. Do you remember that?

[victim]: I'm going to say that it was 2004. It was January when I was thirteen. So it was 2004.

[trial court]: Well, what's your birthday?

[victim]: November the 10th.

[trial court]: November the 10th of 2000—what?

[victim]: 1991.

[trial court]: 1991. Okay. And you're saying that this happened when, if you know?

[victim]: January, it was the beginning of the year.

[trial court]: Of 2004, not 2005? Which is it?

[victim]: 2004.

[trial court]: Okay. All right.

[defense counsel]: Your Honor, I have to lodge my objection for the record for that little follow up between the bench and—

[trial court]: Well, I just need to get this clarified, because it is, obviously, very significant. And it's her testimony. And all I want it to be is your testimony. So do you know when this happened?

[victim]: Yes, sir. I do.

[trial court]: And when was it?

[victim]: January—January 6th, 2004.

[trial court]: All right. Go ahead. It's her testimony. I'm not trying to say anything. I don't—you know—

[State]: Do you remember what grade you were in when it happened?

[victim]: Sixth.

Further questioning by the State established that the victim was twelve years old in January when she was in the sixth grade. The victim said she was nervous and that she had never testified in court before.

The victim testified that she was home from school on the day of the offense because she had been suspended for three days for fighting. After her siblings had left for school, the Defendant woke her up. He told her to lock the door to the house, and then he told her to come into his bedroom and massage his back. He was lying on his stomach, under a comforter. She began to massage his back, and he keep telling her to “go down” lower on his back. She started crying because she was almost touching his buttocks, but he told her it was okay because it was “a fatherly/daughterly massage.” She continued to massage his back, but when she thought he had fallen asleep, she attempted to “sneak” out of the bedroom. He asked where she was going, and she said she had to use the restroom. He told her to “hurry back.”

When she came out of the restroom, he was lying on his back. The Defendant had taken off the “underwear shorts” he had been wearing, but his genitals were covered with a brown towel. The victim then testified to the following:

He told me to come in there and massage his feet. So I was massaging his feet. And I was kind of dozing off because I was still tired. And he told me—he—he kept telling me to go up and go up somewhere behind his knees. And then I—he

kept telling me to go up and he said, get some more lotion. So I kept on massaging his legs. It was up above his knees. And then he moved my hand to his private area.

The victim testified that the Defendant made her hand go “up and down,” and said that “he kept making me jack him off on the brown towel.” When she began, his penis was soft, but “it ended up hard.” The victim said this went on for “ten to twenty minutes,” and that the Defendant was “moaning.” Eventually, he told her to stop and then directed her to wash her hands and make him some breakfast.

The victim then went to the kitchen to make breakfast, and she called Mrs. Valerie Robinson, the Defendant’s wife and her adoptive mother, and told her that the Defendant was making her touch his penis. Mrs. Robinson, a schoolteacher, came home from work immediately. After talking to the Defendant, Mrs. Robinson went to a store to buy some bread. While she was out, the Defendant told the victim “don’t tell nobody” about what happened and to remember that “it was a fatherly/daughterly massage.” Mrs. Robinson took the victim back to school with her once she returned to the house from the store, and the victim spent the rest of the day there.

The victim testified that she did not tell anyone outside the family about the incident until “the beginning of 2006,” (approximately two years later) when an investigator from the Department of Children’s Services (DCS) approached her at school. The DCS investigator was alerted to potential physical abuse perpetrated on one of her brothers by the Defendant, and during the course of the investigation, the investigator was told about the incident described above. Later, the police became involved in the investigation, and a detective had the victim make a telephone call to the Defendant which was recorded without his knowledge.

The victim also testified that after the investigation was underway, one of her brothers told her biological mother (with whom she had contact) about the allegations of offensive sexual conduct. Her mother told her to write down what happened in a letter, and the victim did so. She mailed the letter to her mother approximately one year before the trial. The letter stated that the incident had taken place on January 6, 2004.

On cross-examination, the victim admitted that she had been suspended from school twice. On one occasion, she was suspended for “stealing drinks from the teacher’s refrigerator.” She also admitted that she once attempted to drive her grandmother’s car without permission. Further, she confirmed that at one time in the past, she had presented her adoptive mother, Mrs. Robinson, with a report card on which her grades had been “changed.”

Also on cross-examination, the victim confirmed that the night before the offensive conduct, she had asked one of her brothers, “what if something happens tomorrow?” She was asking her brother what would happen if the Defendant did something inappropriate to her while they were home alone. She explained on redirect that she had been made to feel uncomfortable by the

Defendant because of the way he looked at her once she started “developing like a woman” and because he told her that her “body shape don’t look like [her] age [sic].”

The victim’s adoptive mother, Valerie Robinson, testified that she had been married to the Defendant for nineteen years but had filed for divorce because he provided no financial support for the large family. The Defendant had not had a regular job for the preceding five years.

Mrs. Robinson testified that on the day of the offense, she had gone to work at the elementary school where she taught, and the victim had remained at home with the Defendant because she had been suspended from school. That morning, the victim called Mrs. Robinson at work and told her that she felt uncomfortable because the Defendant had her “touch him inappropriately and she felt uncomfortable.” Mrs. Robinson said that she left for home right away because the victim “sounded serious.” At that time, Mrs. Robinson thought that the victim “needed rescuing.”

Once she got home, Mrs. Robinson spoke with the Defendant who explained to her “that he had fallen asleep and he felt [the victim] touching [his penis] and he was startled and woke up.” After going to a store to get something for the Defendant, she took the victim back to school with her. When they returned that evening, the Defendant called a “family meeting,” but Mrs. Robinson did not attend it.

Mrs. Robinson testified that it was not uncommon for the victim or another daughter to massage the Defendant’s legs and feet because he had diabetes and poor circulation. When the Defendant slept at night, he wore “little or nothing.”

Mrs. Robinson did not notify any authorities after the victim told her what had happened, but she did make sure that the Defendant was not left at home alone with the young girls after the incident. Mrs. Robinson could not approximate when the incident occurred.

On cross-examination, Mrs. Robinson confirmed that none of their other children had ever made any similar allegation against the Defendant. Mrs. Robinson also said that she did not report the incident to the authorities because she did not know who to believe. At the time of trial, she remained uncertain whether the victim or the Defendant was telling the truth.

Detective Robert Carrigan of the Nashville Metropolitan Police Department’s Sex Crimes Section testified that he headed the investigation in this case. Asked when the incident occurred, the detective responded “[a]pproximately February of 2004, potentially.” Despite his efforts, Detective Carrigan could not locate the school records showing for which days the victim was suspended for fighting.

He first interviewed the Defendant in February 2006, and the Defendant denied the victim’s allegations, saying that he was asleep when the victim began touching his penis. In March 2006, Detective Carrigan had the victim call the Defendant on the telephone and recorded their conversation. The detective again interviewed the Defendant in May 2006. Recordings of the

telephone call and both interviews were played for the jury, and the Defendant did not make any direct admissions on any of the recordings; however, some of the details he provided were inconsistent.

On cross-examination, Detective Carrigan confirmed that the only evidence of the crime in this case was the victim's word. As such, he agreed that the case "boils down to a question of credibility." Two of the victim's brothers told the detective during the course of his investigation that they did not believe the victim's allegations, but they also said that "she'd been consistent and she continued to say that she wasn't lying about the incident."

Defense witness Reverend Henry Blaze III, a pastor at the Progressive Missionary Baptist Church, testified that he had previously worked with the Defendant. According to the witness, the Defendant was a truthful man who would not "do anything to hurt anyone."

Decarlos Tyler Eugene Robinson, the Defendant's biological son and the victim's adoptive brother, testified that he grew up with the victim. He described the victim's honesty as follows:

She lies a lot. She, like, can lie with a straight face, keep a straight face while she's lying to you. But she feels, like, really guilty about it, so, eventually, she'll end up telling the truth. Or she might stick to the story for so long, that it just seems like the truth to her, so she's going to keep saying the same thing.

One of the victim's biological brothers, sixteen-year-old Cameron Robinson, testified that he had also been adopted by the Defendant and that he was "very close" with the victim. According to him, the night before the alleged incident, the victim asked him "what if tomorrow while we're at school, what if [the Defendant] tried to do something to her?" Cameron Robinson thought that the victim was lying about the offense: he thought that their biological mother had instructed the victim to make the allegation "so she [could] get her back."

The victim's other biological brother, Lamar Robinson, testified that he loved the victim but that she was a "habitual" liar. He did not believe the victim's allegations against the Defendant.

Scott Lamar Robinson testified that the Defendant was his uncle, and he had raised him since he was four years old. Accordingly, he grew up with the victim from a young age. In his opinion, the victim was "a chronic liar." For example, he said that in the past, she had lied about changing the grades on her report card and about whether she stole money from her grandmother's purse.

After hearing the arguments of counsel and being charged by the trial court, the jury deliberated before returning a verdict of guilty on the principle charge of aggravated sexual battery. Subsequently, a sentencing hearing took place, and the trial court ordered an eight-year sentence. Pursuant to statute, he was ordered to serve 100% of the sentence in the Department of Correction. See Tenn. Code Ann. § 40-35-501(i)(2)(H).

## ANALYSIS

### I. Sufficiency of the evidence

On appeal, the Defendant argues that the evidence was not sufficient to support his conviction. Specifically, he asserts that the State failed to prove beyond a reasonable doubt that the victim was less than thirteen years of age at the time of the offense. He puts forth that “[o]nly by sheer speculation and conjecture could any reasonable juror determine that the victim” was less than thirteen when the crime occurred.

Tennessee Rule of Appellate Procedure 13(e) prescribes that “[f]indings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt.” A convicted criminal defendant who challenges the sufficiency of the evidence on appeal bears the burden of demonstrating why the evidence is insufficient to support the verdict, because a verdict of guilt destroys the presumption of innocence and imposes a presumption of guilt. See State v. Evans, 108 S.W.3d 231, 237 (Tenn. 2003); State v. Carruthers, 35 S.W.3d 516, 557-58 (Tenn. 2000); State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). This Court must reject a convicted criminal defendant’s challenge to the sufficiency of the evidence if, after considering the evidence in a light most favorable to the prosecution, we determine that any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); State v. Hall, 8 S.W.3d 593, 599 (Tenn. 1999).

On appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable and legitimate inferences which may be drawn therefrom. See Carruthers, 35 S.W.3d at 558; Hall, 8 S.W.3d at 599. A guilty verdict by the trier of fact accredits the testimony of the State’s witnesses and resolves all conflicts in the evidence in favor of the prosecution’s theory. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). Questions about the credibility of witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, and this Court will not re-weight or re-evaluate the evidence. See Evans, 108 S.W.3d at 236; Bland, 958 S.W.2d at 659. Nor will this Court substitute its own inferences drawn from circumstantial evidence for those drawn by the trier of fact. See Evans, 108 S.W.3d at 236-37; Carruthers, 35 S.W.3d at 557.

As is relevant in the Defendant’s case, the definition of aggravated sexual battery is “unlawful sexual contact with a victim by the defendant or the defendant by a victim” when “the victim is less than thirteen (13) years of age.” See Tenn. Code Ann. § 39-13-504(a)(4).

In this case, the Defendant challenges only whether the evidence was sufficient to establish the victim’s age. The victim testified that her date of birth was November 10, 1991. Therefore, her thirteenth birthday was on November 10, 2004. The victim’s testimony on this point is set out at length in this opinion. Based on that testimony, it is evident that the victim initially had trouble remembering what year the abuse occurred. However, she eventually testified that the offense took place on January 6, 2004. Viewed in a light most favorable to the prosecution, this evidence is



sufficient to establish that the victim was twelve years old when the unlawful sexual conduct took place. This issue lacks merit.

## **II. Trial court's questioning of the victim**

In a related argument, the Defendant asserts that the trial court's questioning of the victim regarding the date on which the offensive conduct took place was improper. He contends that the "tone and emphasis" of the trial court's questions "impermissibly reflected upon the credibility" of the victim as a witness, thereby violating "the Tennessee Constitution's clear prohibition against judicial comment on all matters of fact."

While a trial court may not ordinarily call non-expert witnesses during a jury trial, "[t]he court may interrogate witnesses." Tenn. R. Evid. 614(b). However, trial courts must take care when questioning witnesses because our constitution specifically prohibits trial courts from making comments "with respect to matters of fact." Tenn. Const. art. VI, § 9; see also State v. Suttles, 767 S.W.2d 403, 406 (Tenn. 1989); State v. Schiefelbein, 230 S.W.3d 88, 117 (Tenn. Crim. App. 2007). Generally, a trial court's questions should serve only to clarify obscure or unclear testimony and should not tend to reveal the court's opinion regarding credibility:

While it is true that the judge may ask questions now and then for the purpose of clearing up points that seem obscure, and supplying omissions, which the interests of justice demand, it is not proper that he conduct an extended examination of any witness, and particularly a prisoner on trial for his liberty or his life. Such a practice, if tolerated by this court, would be far more hurtful to the administration of justice than the escape of many prisoners. It is essential that trials shall be managed fairly, and that trial judges shall not only be just to both sides, but that they shall observe in their demeanor an even tenor, so that an impartial state of mind may be apparent to all concerned.

Parker v. State, 178 S.W. 438, 438 (Tenn. 1915); see also Collins v. State, 416 S.W.2d 766, 767 (Tenn. 1967) (finding that the trial court improperly questioned the defendant and remanding for a new trial); McDonald v. State, 14 S.W. 487, 488 (Tenn. 1890) ("It is natural that jurors should be anxious to know the mind of the Court, and follow it; therefore, a Court cannot be too cautious in [its] inquiries.").

In this case, it appears from the record that the trial court interceded during the State's questioning of the victim in order to clarify an obscure point in her testimony—the date on which the unlawful sexual conduct took place. This line of questioning by the trial court is set out herein, and based on our review of the transcript, we conclude that the trial court's questions were not improper. While stating that this was a "significant" issue, the court did not make any comment that could have led any juror to believe that the court had an opinion as to the actual date of the offense or whether the victim was a believable witness. This issue also lacks merit.

**Conclusion**

Based on the foregoing authorities and reasoning, we affirm the judgment of the trial court.

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DAVID H. WELLES, JUDGE